



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 8, 2021

Ms. Kimber Summers  
Assistant General Counsel  
Texas Woman's University  
P.O. Box 425497  
Denton, Texas 76204

OR2021-03290

Dear Ms. Summers:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 864466 (TPIA\_2020\_097).

Texas Woman's University (the "university") received a request for the current university contracts pertaining to the provision of specified services. You claim some of the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the information at issue may implicate the proprietary interests of Compass Group USA, Inc. d/b/a Chartwells ("Chartwells"). Accordingly, you state, and provide documentation demonstrating, the university notified Chartwells of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Chartwells. We have considered the submitted arguments and reviewed the submitted information.

We note section 2261.253 of the Government Code provides, in relevant part, as follows:

(a) For each contract for the purchase of goods or services from a private vendor, each state agency shall post on its Internet website:

(1) each contract the agency enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires or is completed[.]

...

(e) A state agency that posts a contract on its Internet website as required under this section shall redact from the posted contract:

...

(2) information the attorney general determines is excepted from public disclosure under [the Act.]

...

(f) The redaction of information under Subsection (e) does not exempt the information from the requirements of Section 552.021 or 552.221.

Gov't Code § 2261.253(a)(1), (e)(2), (f). We note the submitted information consists of contracts between the university, a state agency, and Chartwells, a private vendor, for the purchase of goods or services. *See id.* § 2261.002(2) ("state agency" has meaning assigned by Gov't Code § 2151.002(3) ("state agency" includes university system or institution of higher education as defined by Educ. Code § 61.003). Further, the contracts at issue have neither expired nor been completed. Thus, we find the contracts at issue are contracts described by section 2261.253. The university raises section 552.104 of the Government Code for portions of the submitted information; however, the exceptions to disclosure found in the Act do not generally apply to information that other statutes make public. *See Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989)*. The 85th Legislature amended section 2261.253; pursuant to the amendments, state agencies shall redact from contracts subject to section 2261.253 information that the attorney general determines is excepted from public disclosure under the Act. Gov't Code § 2261.253(e)(2); *see also id.* §2261.253(f). The amendments "apply only in relation to a contract for which a state agency first advertises or otherwise solicits bids, proposals, offers, or qualifications on or after [September 1, 2017]." Act of May 29, 2017, 85th Leg., R.S., ch. 556, § 17(c). Upon review, we find the contracts at issue are subject to the amendments. Thus, we will consider the university's argument under section 552.104 of the Government Code for the information at issue.

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, would "harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). After review of the information at issue and consideration of the arguments, we find you have failed to demonstrate the applicability of section 552.104 to the information at issue. Therefore, we conclude the university may not withhold any portion of the submitted information under section 552.104(a) of the Government Code.

Chartwells raises sections 552.110 and 552.1101 of the Government Code for portions of the contracts at issue. Section 552.0222 of the Government Code provides, in relevant part:

(b) The exceptions to disclosure provided by Sections 552.110 and 552.1101 do not apply to the following types of contracting information:

(1) a contract described by Section 2261.253(a), excluding any information that was properly redacted under Subsection (e) of that section[.]

Gov't Code § 552.0222(b)(1). As noted above, the contracts at issue are contracts described by section 2261.253(a). Additionally, we have no indication any portion of the contracts at issue were properly redacted under section 2261.253(e). Although Chartwells raises sections 552.110 and 552.1101, section 552.0222 expressly states these exceptions do not apply to a contract described by section 2261.253(a). Therefore, we do not address the arguments of Chartwells against disclosure for the contracts at issue under either section 552.110 of the Government Code or section 552.1101 of the Government Code, and the university may not withhold any portion of it on those bases. Consequently, the university must release the submitted information in its entirety pursuant to section 2261.253 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/rm

Ref: ID# 864466

c: Requestor

c: Third Party